

REMARKS

Claims 1-19 are currently pending in this application. Claims 11 and 12 have been amended. No new matter has been added by these amendments. Applicant has carefully reviewed the Office Action and respectfully requests reconsideration of the claims in view of the remarks presented below.

Double Patenting

Claims 11 and 12 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 9 and 10 of copending application serial no. 10/728,459.

Applicant herein submits a Terminal Disclaimer disclaiming the terminal part of the statutory term of any patent granted on the present application, which would extend beyond the expiration date of the full statutory term of any patent issuing from copending application serial no. 10/728,459. In view of this Terminal Disclaimer, and remarks presented below with respect to other rejections of claims 11 and 12, it is respectfully submitted that claims 11 and 12 are in condition for allowance.

Claims 1, 2, 4 and 7-12 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 7-11, 14 and 15 of copending application serial no. 10/728,511.

Applicant herein submits a Terminal Disclaimer disclaiming the terminal part of the statutory term of any patent granted on the present application, which would extend beyond the expiration date of the full statutory term of any patent issuing from copending application serial no. 10/728,511. In view of this Terminal Disclaimer, and remarks presented below with respect to other rejections of claims 11 and 12, it is respectfully submitted that claims 1, 2, 4 and 7-12 are in condition for allowance.

Claim Rejections Under 35 U.S.C. §102

Claims 11 and 12 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,477,415 (Yerich). Claims 11 and 12 were also rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,731,980 (Moucharwar).

Independent claim 11 relates to a device that includes an atrial rate determination unit programmed to determine an atrial rate using unipolar sensing outside the refractory periods and using combined unipolar/bipolar sensing within the refractory periods. Independent claim 12 relates to a device that includes means programmed for determining an atrial rate using unipolar sensing outside the refractory periods and using combined unipolar/bipolar sensing within the refractory periods.

Neither Yerich nor Moucharwar discloses a determination unit programmed to determine, or a means programmed for determining, an atrial rate using unipolar sensing outside refractory periods and using combined unipolar/bipolar sensing within refractory periods.

In view of the foregoing, Applicant submits that each of Yerich and Moucharwar fails to disclose the combinations of elements and features recited in independent claims 11 and 12. Accordingly, Applicant requests reconsideration of the §102 rejections of these claims and their respective dependent claims.

Allowable Subject Matter

Claims 3, 5, 6 and 13-19 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims.

In view of the Terminal Disclaimers filed herein and the remarks presented above with respect to the rejections of independent claims 1 and 11, Applicant believes claims 3, 5, 6 and 13-19 are allowable without amendment. Applicant, however, reserves the right to amend these claims at a later time.

PATENT

Claims 1-10 and 13-16 were indicated as allowable if rewritten or amended to overcome the double patenting rejections set forth in the Office Action.

In view of the Terminal Disclaimers filed herein with respect to the double-patenting rejections of claims 1, 2, 4 and 7-12, Applicant believes claims 1-10 and 13-16 are allowable without amendment. Applicant, however, reserves the right to amend these claims at a later time.

CONCLUSION

Applicant has made an earnest and bona fide effort to clarify the issues before the Examiner and to place this case in condition for allowance. Therefore, allowance of Applicant's claims 1-19 is believed to be in order.

Respectfully submitted,

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